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OFFICE OF PETITIONS

In re	:
Nabel, et al.	:
Application No. 09/708,276	:
Filed: November 7, 2000	:
Patent No. 6,884,431	:
Issued: April 26, 2005	:
	:
	:

DECISION REGARDING
PATENT TERM ADJUSTMENT

This decision is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT" filed May 23, 2005, requesting correction of the patent term adjustment (PTA) indicated on the patent.

The request is **DISMISSED**.

On April 26, 2005, the above-identified application issued into patent no. 6,884,431, with a patent term adjustment (PTA) of one hundred twenty-two (122) days. On May 23, 2005, applicants submitted the instant "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT". Applicants state that the PTA of 122 days "may extend the term of this patent by too many days."

The Office initially determined a patent term adjustment of one hundred twenty-two (122) days based on an adjustment for PTO delay of seventy-six (76) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(2), and one hundred fifty-nine (159) days pursuant to 35 U.S.C. 154(b)(1)(B)(i) and 37 C.F.R. § 1.703(b)(1), reduced by seventy-six (76), one (1),

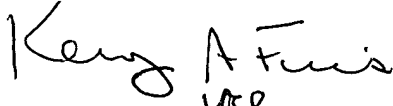
and thirty-eight (38) days of applicant delay pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b).

Review of the record indicates that the PTA of one hundred twenty-two (122) days as indicated on the patent is correct. It is true that applicants filed a terminal disclaimer on August 8, 2003. However, In calculating the PTA, the Office does not differentiate between patents that have terminal disclaimers and those that do not. Nor does the Office undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 C.F.R. § 1.703(g), it is indicated in the patent that the PTA indicated therein is subject to any disclaimer. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer.

As the application file has already issued into a patent, the file is being returned to Files Repository.

Telephone inquiries specific to this letter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.


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